

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)

Amendment to the Commission's)
Rules Regarding a Plan for)
Sharing the Costs of Microwave)
Relocation)

WT Docket No. 95-157

To: The Commission

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**REPLY COMMENTS OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.**

The Industrial Telecommunications Association, Inc. ("ITA"), in accordance with Section 1.415(c) of the Rules and Regulations of the Federal Communications Commission and pursuant to the Commission's *First Report and Order and Further Notice of Proposed Rule Making*¹ in the above-referenced proceeding, hereby files these Reply Comments responsive to the various comments filed by participating parties.

I. Background

1. The Industrial Telecommunications Association has followed the developments in this proceeding with considerable interest. In Comments filed on November 30, 1995, ITA urged the

¹ *First Report and Order and Further Notice of Proposed Rule Making* (FCC 96-196), WT Docket No. 95-157, adopted April 25, 1996, released April 30, 1996 [hereinafter "Cost-Sharing Report and Order"].

Commission to open up the clearinghouse function to competitive bidding from all interested entities. ITA reasoned that competitive bidding "would ensure that the function is performed without unnecessary expense [and] would provide an opportunity for interested organizations to develop meaningful, and possibly innovative, procedures that would best promote the reimbursement process."

2. In its *Cost-Sharing Report and Order*, adopted April 25, 1996, the Federal Communications Commission delegated authority to select one or more entities for the creation and management of a "neutral, not-for-profit clearinghouse" to the Wireless Telecommunications Bureau. In its *Public Notice* accompanying this decision, the Bureau encouraged "entities interested in serving as a cost-sharing clearinghouse, such as ITA, to submit business plans."² Accordingly, on May 24, 1996, ITA filed a proposal and business plan outlining its comprehensive program for serving as a neutral, not-for-profit administrator of the Commission's cost-sharing plan.

3. These reply comments address one issue that is critical to the successful operation of the Commission's cost-sharing plan, i.e., participation by incumbent microwave licensees in the cost-sharing program.

² *Public Notice* (DA 96-647), released April 25, 1996, at 2.

II. Reply Comments

4. In the proposal segment of the *Cost-Sharing Report and Order*, the Commission tentatively concluded that microwave incumbents who relocate themselves should be allowed to obtain reimbursement rights and collect reimbursement under the cost-sharing plan. The Commission reached this conclusion because "allowing incumbent participation might facilitate system-wide relocations and could potentially expedite the deployment of PCS."³

5. BellSouth Corporation opposes the proposal to permit an incumbent to relocate its own facilities and participate in cost-sharing, and the Personal Communications Industry Association ("PCIA") expresses "grave concerns" with microwave participation. On the other hand, UTC, the Cellular Telecommunications Industry Association ("CTIA"), and the South Carolina Public Service Authority ("Santee Cooper") support the Commission's proposal to permit incumbent participation.

6. BellSouth Corporation argues that incumbent participation would create "perverse incentives" for the incumbents. BellSouth does not believe that any party to the process would be capable of effective cost-containment oversight. "Any surrogate mechanism devised to serve that role," BellSouth

³ *Cost-Sharing Report and Order*, para. 99.

contends, "likely either would impose too little control in which case the cost-sharers would be overpaying or would be so constricting that no incumbent would avail itself of the opportunity."⁴

7. PCIA voices two fundamental concerns with microwave participation: (1) there would be no independent check on the comparability of replacement systems, and (2) there would be no assurance that costs for the installation were fair because there would be little incentive for incumbents to minimize the cost of replacement systems and a clear opportunity for "gold plating" the replacement systems.⁵ In PCIA's view, because cost-sharing obligations will be triggered by the proximity threshold, an incumbent could relocate its own system and then demand reimbursement even when PCS providers may not have caused any interference to the incumbent's operations.⁶

8. UTC argues, on the other hand, that incumbent participation will promote early relocation of microwave systems, permit incumbents to have greater flexibility in the selection of replacement frequencies, and promote the relocation of entire systems at once. UTC believes that incumbent participation will not raise any significant implementation problems because

⁴ BellSouth Corporation comments, p. 8.

⁵ PCIA comments, pp. 5-6.

⁶ PCIA comments, p. 8.

incumbents who avail themselves of this opportunity would be required to maintain documents to support their relocation costs and would be subject to the caps governing reimbursement.⁷ UTC also observes that participating incumbents are not guaranteed to receive reimbursement for the relocation of a link unless and until a subsequent PCS licensee's deployment would have required the relocation.⁸

9. CTIA expresses confidence that, with effective implementation and oversight of the recovery caps, microwave incumbents will not gain an economic windfall.⁹ Santee Cooper believes that there is an easy resolution to the concern regarding the possible tendency by incumbents to "gold plate" their replacement systems. Santee Cooper states that, for the majority of cases, the cost-sharing rules can be applied to incumbents in the same manner as they are applied to PCS licensees.¹⁰

10. In its role as a prospective clearinghouse, ITA will adhere to whatever decision the Commission reaches on the incumbent participation issue. However, from ITA's perspective, the potential for possible abuse of the process by incumbents is

⁷ UTC comments, p. 7.

⁸ Id.

⁹ CTIA comments, p. 7.

¹⁰ Santee Cooper comments, p. 4.

readily manageable. It is readily within the capability of the designated clearinghouse(s) to ensure that the costs slated for reimbursement are accurate and reasonable.

11. In its clearinghouse proposal filed May 24, 1996, ITA proposed to implement a cost-sharing process that does not distinguish whether the party seeking reimbursement is a PCS relocater or an incumbent relocater.¹¹ As a clearinghouse, "ITA would require the self-relocating microwave incumbent to follow the identical registration procedures" as for PCS relocators.¹² The cost-sharing process outlined in ITA's Business Plan would, therefore, apply with equal validity to both PCS relocators and self-relocating incumbent licensees.¹³

¹¹ ITA Business Plan for the Administration of a 2 GHz Microwave Relocation Cost-Sharing Clearinghouse, p. 23.

¹² Id.

¹³ ITA recognizes that the mechanics of microwave incumbents' participation in the cost-sharing plan becomes significantly more complicated in an environment in which a designated clearinghouse is structured as a membership-based corporation, especially when the membership is premised on payment of an up-front cash contribution. The up-front fee requirement would seem to be incompatible with the concept of microwave licensees voluntarily relocating their systems. ITA notes, however, that there is no requirement for prospective clearinghouses to be structured as a membership-based corporation. The Commission has given the parties interested in serving as clearinghouses a significant degree of latitude in determining how best to structure the clearinghouse entity.

III. Conclusion

12. From the perspective of an entity that has invested considerable time and energy in formulating a credible clearinghouse proposal, the issue of self-relocating incumbent microwave participation in the 2 GHz cost-sharing plan seems neither complex nor troublesome. It is within the responsibility of the designated clearinghouse(s) to ensure that the costs slated for reimbursement are accurate and reasonable. ITA does not foresee any reason why the cost-sharing process established to govern the 2 GHz relocations would not apply with equal validity to PCS relocators and self-relocating incumbent licensees.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully submits these Reply Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

**INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.**

By: 

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By: 

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Date: June 7, 1996

CERTIFICATE OF SERVICE

I, Barbara J. Levermann, do hereby certify that on the 7th day of June 1996, I forwarded to the parties listed below a copy of the foregoing Reply of the Industrial Telecommunications Association, Inc., by first-class mail, postage pre-paid:

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